

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

DE JESUS-GONZALEZ, et al.,

## Appellants,

**Civil No. 11-2080 (GAG)**

**SEGARRA-MIRANDA, WILFREDO,**

## Adversary No. 09-00150 (BKT)

**Appellee.**

## OPINION AND ORDER

Presently before the court is the appeal by Sitka Enterprises, Inc., Berrios & Longo Law Offices, P.S.C., and Fernando E. Longo-Quinones (“Appellants”) of an order issued by the United States Bankruptcy Court for the District of Puerto Rico (Docket No. 15-2), transferring Adversary Case No. 09-150 (BKT), to the U.S. District Court. The issue on appeal is whether the bankruptcy court acted within its power when it transferred the case to the district court.

## I. Factual and Procedural History

16 The present appeal is just one of a smorgasbord of motions, appeals and cases filed before  
17 the district court questioning the bankruptcy court’s orders. Because of the multiple appeals and the  
18 particularities involved with each, the court only summarizes the facts and background necessary  
19 to decide the instant appeal. The trustee (“Appellee or Trustee”) brought this adversary proceeding  
20 against Appellants in bankruptcy court alleging Jose de Jesus-Gonzalez and Nitxa Garcia-Reyes  
21 (“Debtors”), their son and daughter, their children’s respective spouses, BDJ Limited Partnership,  
22 S.E., Berrios and Longo Law Offices, P.S.E., Sitka Enterprises, Inc. and Fernanado Longo-Quinones  
23 fraudulently transferred property from the Debtor’s estate. Appellants filed a motion to dismiss with  
24 the bankruptcy court claiming the bankruptcy court did not have jurisdiction over the adversarial  
25 proceeding due to the inclusion of the fraudulent conveyance claim. (See Adv. No. 09-150 (BKT);  
26 Docket No. 68.) That motion was denied by the bankruptcy court. (See id. at 84.) Appellants  
27 appealed that decision to the district court. (See Civil No. 10-1847 (CCC).) While that appeal was

1 pending, Trustee filed a withdrawal of reference with the district court seeking to have the district  
 2 court take jurisdiction of the case. (See Civil No. 1848 (GAG).) The withdrawal of reference was  
 3 denied because the motion was deemed not ripe. (See Civil No. 10-1848 (GAG); Docket No. 7.)  
 4 In ruling that the withdrawal of reference was not ripe, the court noted there must be a right to a jury  
 5 trial prior to withdrawing the reference. (See *id.*) The right to a jury trial was one of the issues on  
 6 appeal in Civil No. 10-1847 (CCC). Therefore, until that appeal was resolved, the withdrawal of  
 7 reference motion would be not be ripe. In Civil No. 10-1847 (CCC), the district court reversed the  
 8 bankruptcy court, citing the recently decided *Stern v. Marshall*, 131 S.Ct. 2594 (2011), which held  
 9 the bankruptcy court, a non-Article III court, does not have the constitutional authority to adjudicate  
 10 state-law counterclaims. (See Civil No. 10-1847 (CCC); Docket No. 15.) The district court then  
 11 remanded the action to the bankruptcy court for further proceedings in conformity with that ruling.  
 12 (See *id.*) Acting upon the remand order, the bankruptcy court transferred the case to the district  
 13 court for adjudication. (See Adv. No. 09-150 (BKT); Docket No. 158.) Both Trustee and  
 14 Appellants appealed the bankruptcy court's order to transfer the case. In Civil No. 11-2079 (JAF),  
 15 Appellee argues the bankruptcy court erred by transferring the entire case, rather than solely  
 16 transferring the fraudulent conveyance action. In the instant appeal, Appellants argue the bankruptcy  
 17 court erred by transferring the case to the district court because it did not have the power to do so  
 18 and that the granting of its appeal in Civil No. 10-1847 (CCC) required complete dismissal of all  
 19 claims. (See Docket No. 11 at 2.)

## 20 II. Standard of Review

21 Appellate courts reviewing a bankruptcy appeal review all conclusions of law *de novo* and  
 22 all factual determinations under the clearly erroneous standard. *In re Vazquez Laboy*, 647 F.3d 367,  
 23 373 (1st Cir. 2011). All conclusions of law shall be re-examined and factual determinations shall  
 24 not be upset unless "it rests on clearly erroneous findings of fact, incorrect legal standards, or a  
 25 meaningful error in judgment." *Perry v. Blum*, 629 F.3d 1, 14 (1st Cir. 2010) (quoting *Tamko*  
 26 *Roofing Prods., Inc. v. Ideal Roofing Co.*, 282 F.3d 23, 39 (1st Cir. 2002)).

## 27 III. Discussion

### A. Judicial Estoppel

1 At the outset, Trustee asks the court to dismiss the instant appeal due to judicial estoppel.  
2 Judicial estoppel prevents a party from pressing a legal claim that is inconsistent with the position  
3 it successfully took in a prior legal proceeding or at an earlier stage of the litigation. See Guay v.  
4 Burack, No. 10-2513, 2012 WL 1352251, at \*4 (1st Cir. Apr. 19, 2012). A party who is successful  
5 in arguing one legal position, may not take a contrary position in a subsequent proceeding just  
6 because that party's interests have changed. See id. The doctrine of judicial estoppel maintains the  
7 integrity of the courts by not allowing parties to manipulate the system.

8 In the instant appeal, Appellants are merely arguing the differing legal issues presented by  
9 the various appeals. This litigation is complex. Currently there are three pending actions all  
10 working their separate ways through the district court. Appellants' initial attempt at consolidating  
11 the four original cases was unsuccessful because the motion to consolidate was filed after the lead  
12 case, Civil No. 10-1847 (CCC) was closed. (See Civil No. 10-1847 (CCC); Docket No. 19.)  
13 Neither party has attempted to consolidate the cases since.<sup>1</sup> As such, the parties have every right to  
14 fully litigate the issues in each case, so long as they do not adopt incompatible stances on the issues.  
15 In the case at bar, the sole issue is whether the bankruptcy court had the power to transfer the entire  
16 case to the district court. In Civil No. 11-2079 (JAF), the parties are required to argue whether the  
17 bankruptcy court should have, or could have, transferred any claims other than the fraudulent  
18 conveyance to the district court. In Civil No. 11-1974 (SEC), a case that is currently stayed, the  
19 parties must litigate the issues as if the court has jurisdiction to hear the issues presented. Just  
20 because Appellants have not raised the issues presented in this appeal in Civil No. 11-1974 (SEC),  
21 does not mean they have taken inapposite stances that would invoke judicial estoppel. Civil No. 11-  
22 1974 (SEC) is stayed pending a ruling in this appeal, as well as the appeal in Civil No. 11-2079  
23 (JAF). Judicial estoppel does not prevent Appellants' argument in this case and will not lead to  
24 Appellant's successfully gaming the system. While these cases could have been consolidated at  
25 some point prior to the present, they were not. Hence, the court must act; and with that, the court

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27 <sup>1</sup> Each judge presiding over these cases and appeals has questioned the parties why these  
cases should not be consolidated. The parties have fought consolidation.

1 shall. The court **DENIES** Appellee's motion to strike the appeal (Docket No. 15).

2 **B. Powers of the Bankruptcy Court**

3 The bankruptcy court is a non-Article III court established by Congress, allowing bankruptcy  
 4 actions to be adjudicated in said court. See 28 U.S.C. § 157 (2012). While the bankruptcy court is  
 5 set up to aid in the administration of bankruptcy proceedings, it is the district court that retains  
 6 original and exclusive jurisdiction over all bankruptcy cases. See 28 U.S.C. § 1334(a); Stern, 131  
 7 S.Ct. At 2603. As such, Congress has given the district court the statutory power to refer any and  
 8 all bankruptcy proceedings to the bankruptcy court for adjudication. See 28 U.S.C. § 157. In this  
 9 district, all cases under Title 11 have been referred to the bankruptcy court for the District of Puerto  
 10 Rico. See General Order of July 19, 1984. Due to this General Order, all cases are automatically  
 11 referred to the bankruptcy court. In order for a case to be transferred from the bankruptcy court to  
 12 the district court, a withdrawal of reference motion must be filed pursuant to Rule 5011 of the  
 13 Federal Rules of Bankruptcy Procedure. See FED.R.BANKR.P. 5011; Local rules 5011-1. A party  
 14 whose claims are entitled to a trial by jury can motion the district court to take jurisdiction over the  
 15 proceedings. See FED.R.BANKR.P. 5011; Local rules 5011-1. There is no other mechanism within  
 16 the Bankruptcy Rules that allow a bankruptcy court to transfer an action to the district court.

17 **C. Compliance With the Court's Order in Civil No. 10-1847 (CCC)**

18 Appellants argue the bankruptcy court should have dismissed the case. The bankruptcy court  
 19 denied Appellants motion to dismiss. (See Adv. No. 09-150, Docket No. 84.) The appeal of that  
 20 order was granted and the case was remanded to the bankruptcy court. (See Civil No. 10-1847  
 21 (CCC); Docket No. 15.) Appellants argue the district court's order in Civil No. 10-1847 (CCC)  
 22 required all claims to be dismissed for lack of jurisdiction. (See Docket No. 11 at 15-16.) Trustee  
 23 argues the district court merely held the bankruptcy court could not adjudicate the fraudulent  
 24 conveyance claim, but refrained from ruling on the jurisdiction as to the rest of the claims or whether  
 25 the bankruptcy court must dismiss the fraudulent conveyance claim. (See Docket No. 18 at 29.)

26 Nothing in its opinion indicates the district court required the bankruptcy court to dismiss  
 27 all claims in this case. (See Civil No. 10-1847 (CCC); Docket No. 15 ("the resolution of the  
 fraudulent conveyance action brought by the trustee in this case cannot be adjudicated by the

1 Bankruptcy Court since it lacks constitutional authority to do so . . . ”).) The opinion clearly lays out  
2 the legal reasons why the bankruptcy court cannot adjudicate the fraudulent conveyance claim, but  
3 does not mandate the bankruptcy court to dismiss that claim or any other claims. While the  
4 bankruptcy court could not adjudicate the fraudulent conveyance claim, other options remained open  
5 to the court and the parties. Accordingly, this court does not find the bankruptcy court acted in direct  
6 violation of the district court’s order by not dismissing all claims.

7 **D. Power to Transfer the Case to the District Court**

8 As a court of limited jurisdiction, the bankruptcy court must operate within its powers. See  
9 Stern, 131 S.Ct. at 2603. The federal statutes, the Federal Rules of Bankruptcy Procedure, as well  
10 as the General Orders by the local district court, establish the parameters within which the  
11 bankruptcy court may act. In the District of Puerto Rico, it has been established that all bankruptcy  
12 cases shall be referred to the bankruptcy court. See General Order of July 19, 1984. Statutorily,  
13 such a referral may be withdrawn pursuant to Federal Rule of Bankruptcy Procedure 5011. Upon  
14 such a withdrawal of reference motion, the district court may grant or deny the withdrawal of  
15 reference. It is the district court that has original and exclusive jurisdiction over these cases. See  
16 28 U.S.C. § 157.

17 The court cannot find any mechanism that would allow the bankruptcy court to transfer a  
18 case from its docket to the district court. The bankruptcy court does not have the power to transfer  
19 cases. A withdrawal of reference allows the district court to ensure only those cases requiring  
20 adjudication in the district court are transferred. Allowing the bankruptcy court to transfer cases to  
21 the district court *sua sponte* would run contrary to the statutory powers given to the bankruptcy court  
22 by Congress. There are no inherent powers of the bankruptcy court that would allow such transfers  
23 in the absence of a statutory grant.

24 This court finds the proper mechanism for transferring a case is by motion to withdraw the  
25 reference. See FED.R.BANKR.P. 5011. In this case, Appellants filed a motion to withdraw the  
26 reference, but it was ruled not ripe for adjudication. The court noted the then pending action, Civil  
27 No. 10-1847 (CCC), would clarify whether the bankruptcy court had the power to adjudicate the

14 Civil No. 11-2080 (GAG)

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16 fraudulent conveyance claim. After Civil No. 10-1847 (CCC) was remanded, no party sought  
17 withdrawal of the reference to the bankruptcy court, most likely because the bankruptcy court  
18 transferred the case *sua sponte* before any such motion could be filed. But such a motion was  
19 necessary to allow a transfer. Now that Civil No. 10-1847 (CCC) has been resolved, a motion for  
20 withdrawal of reference may be ripe and appropriate at this time.

21 A motion for withdrawal of reference is useful because it allows both the parties and the  
22 court to analyze the issues presented and rule on which issues should be transferred to the district  
23 court and which issues can and should be resolved by the bankruptcy court. It also provides the  
24 parties an opportunity to consent to trial before the bankruptcy court. Allowing all interested parties  
25 the opportunity to raise potential issues to the court prior to transfer will facilitate the court in  
26 making the proper ruling. That is the case here. A motion for withdrawal of reference is a right of  
27 the parties and will allow the moving party to select which issue(s) the reference should be  
withdrawn. Once motioned by the moving party, any party opposing such a motion may make the  
appropriate arguments to the district court, which will then rule on the motion. The court finds this  
procedural route to not only be the statutorily proper mechanism for transferring a case from the  
bankruptcy court to the district court, but it also is the route that allows for the issues to be fully  
developed and argued before the court. As such, the court **GRANTS** Appellants' appeal as to the  
inability of the bankruptcy court to transfer the case to the district court and **DENIES** Appellants'  
arguments that the only course of action for the bankruptcy court is full dismissal of all claims. The  
case is hereby **REMANDED** for further adjudication in compliance with this ruling.

28 **SO ORDERED.**

29 In San Juan, Puerto Rico this 25th day of May, 2012.

30 *S/Gustavo A. Gelpi*

31 GUSTAVO A. GELPI  
32 United States District Judge